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ZAPPOS.COM, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

ZAPPOS.COM, INC., a California corporation, Plaintiff, vs. GLOBAL PATENT HOLDINGS, LLC, Defendant.	Case No. ____________________ **COMPLAINT** **DEMAND FOR A JURY TRIAL**

Plaintiff Zappos.com, Inc. ("Zappos.com"), demanding trial by jury, hereby complains against Global Patent Holdings, LLC ("GPH") and alleges as follows:

PARTIES

1. Plaintiff Zappos.com is a California corporation with corporate offices located at 2280 Corporate Circle Drive, Suite 100, Henderson, Nevada 89074.

2. Upon information and belief, defendant GPH is a Delaware limited liability company with its principal place of business at 500 Skokie Boulevard, Suite 350, Northbrook, Illinois 60062.

3. GPH claims to be the owner of U.S. Patent No. 5,253,341 (the "'341 Patent").

4. According to the United States Patent and Trademark Office's on-line records, the '341 Patent lists as its inventors Anthony I. Rozmanith and Neil Berinson.

5. Upon information and belief, GPH is the assignee of the '341 Patent.

6. Upon information and belief, GPH is solely in the business of obtaining licenses and licensing revenue from companies.

JURISDICTION

7. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, for a declaration pursuant to the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, that the '341 Patent is not infringed by Zappos.com or is invalid or both.

8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

9. Upon information and belief, this Court has personal jurisdiction over GPH because GPH has constitutionally sufficient contacts with Nevada so as to make personal jurisdiction proper in this Court. In particular, and as set forth in more detail below, GPH has sent at least three letters addressed to Zappos.com, at its Nevada office and received in its Nevada office, wherein GPH has reached into Nevada and offered to do business with Zappos.com by way of a substantial royalty-based license based on the sales of a Nevada-based company, allegedly dealing with the '341 Patent.

10. Upon information and belief, GPH conducts or solicits similar business within this District and derives substantial revenue from the licensure of the '341 Patent within this District.

VENUE

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) & (c).

GENERAL ALLEGATIONS

12. Zappos.com is a leading Internet retailer of name-brand merchandise.

13. GPH has alleged that Zappos.com infringes the '341 Patent, issued on October 12, 1993, and reissued on July 24, 2007, entitled "Remote Query Communication System".

14. By letter dated August 14, 2007, Raymond P. Niro, Esq., GPH's legal counsel ("Mr. Niro") wrote to Tony Hsieh, Chief Executive Officer and Director of Zappos.com, asserting GPH's alleged ownership of the '341 Patent, explaining the technology that the '341 Patent allegedly relates to, and the reexamination procedure of the '341 Patent (the "August 14 Letter").

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15. After setting forth these details in the August 14 Letter, Mr. Niro stated, "To facilitate a dialogue on settlement, we have prepared a claim chart showing exactly how the operation of Zappos.com's website induces and contributes to the use of the patented methods . . . [of the '341 Patent]." Mr. Niro enclosed a claim chart with the August 14 Letter.

16. On behalf of GPH, in the same August 14 Letter Mr. Niro then offered Zappos.com "a fully paid-up license and release in exchange for a lump-sum, paid-up royalty[.]" Mr. Niro enclosed a royalty schedule with the August 14 Letter.

17. The August 14 Letter from Mr. Niro closes by hoping for "a favorable response to [GPH's] license offer[]" and requesting Zappos.com to let him "know if there is any other information [Zappos.com] needs from [Mr. Niro's office] to fully evaluate this paid-up license offer."

18. The August 14 Letter asserts against Zappos.com a claim of infringement of the '341 Patent.

19. Zappos.com. received another letter from the Niro Firm dated September 27, 2007, advising Zappos.com of recent developments, namely that GPH had recently recommenced in Illinois a previously dismissed lawsuit with respect to the '341 Patent. GPH also indicated that it wanted Zappos.com to make an offer to license the '341 Patent from GPH.

20. Zappos.com. received a third letter from the Niro Firm dated December 12, 2007. In this letter, GPH again advised Zappos.com of recent developments, this time that GPH had filed yet another lawsuit against a group of defendants, this time in Florida, with another request to receive a response from Zappos.com regarding GPH's desire to license the '341 Patent to Zappos.com.

21. In all the letters sent to Zappos.com by the Niro firm, GPH made reference to other threatened or actual legal proceedings regarding the '341 Patent. The tone of GPH's last letter to Zappos.com, especially when viewed in the context of the previous two letters, makes it clear that GPH intends to bring suit against Zappos.com regarding its claims of alleged infringement of the '341 Patent unless Zappos.com proceeds to license the '341 Patent from GPH.

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22. By virtue of GPH's actions and statements, there currently exists a an actual and justiciable controversy relating to the '341 Patent as between Zappos.com and GPH. The false allegations of infringement relating to the patent-in-suit places a cloud over Zappos.com's e-commerce business. Given GPH's conduct, there exists a clear and serious threat to Zappos.com's business so long as the issues regarding the patent-in-suit remain unresolved. Zappos.com therefore needs and seeks resolution of the issues asserted in this complaint for declaratory relief to lift the cloud over Zappos.com's business. On such basis, Zappos.com is entitled to declaratory relief.

23. Zappos.com denies that it now infringes or in the past has infringed, either literally or under the doctrine of equivalents, any valid claim of any of the '341 Patent.

24. Zappos.com seeks a declaratory judgment that it does not infringe either literally or under the doctrine of equivalents any valid claim of the '341 Patent.

FIRST CLAIM FOR RELIEF

(Declaratory Relief as to the '341 Patent – Non-Infringement)

25. Zappos.com incorporates by reference paragraphs 1 through 24 above as though fully set forth herein.

26. Zappos.com is not directly infringing, contributorily infringing, or actively inducing others to infringe either literally or under the doctrine of equivalents any valid claim of the '341 Patent as properly construed, and has not done so in the past.

27. Zappos.com is entitled to a declaration by the Court that it has not and does not infringe any valid claim of the '341 Patent.

SECOND CLAIM FOR RELIEF

(Declaratory Relief as to the '341 Patent – Invalidity)

28. Zappos.com incorporates by reference paragraphs 1 through 27 above as though fully set forth herein.

29. The claims of the '341 Patent are invalid for failure to satisfy the provisions of one or more of 35 U.S.C. §§ 102, 103, 112, 132 and/or 305.

30. Zappos.com is entitled to a declaration by the Court that the '341 Patent is invalid.

THIRD CLAIM FOR RELIEF

(Declaratory Relief as to the '341 Patent – Doctrine of Intervening Rights)

31. Zappos.com incorporates by reference paragraphs 1 through 30 above as though fully set forth herein.

32. Zappos.com has absolute and/or equitable intervening rights in the '341 Patent under 35 U.S.C. §§ 252 and/or 307(b) regardless of whether any claims of the '341 Patent are invalid or infringed by Zappos.com.

33. Zappos.com is entitled to a declaration by the Court that it does not infringe any valid claim of the '341 Patent by virtue of its intervening rights.

PRAYER FOR RELIEF

1. WHEREFORE, Zappos.com prays for relief against GPH as follows:

2. For a declaration that Zappos.com does not now infringe, and has not in the past infringed, either literally or under the doctrine of equivalents any valid claim of any of the '341 Patent;

3. For a declaration that the claims at issue of the '341 Patent are invalid;

4. For a declaration that Zappos.com does not infringe any valid claim of the '341 Patent by virtue of its intervening rights.

5. For a declaration that this is an exceptional case under 35 U.S.C. § 285 and for an award to Zappos.com of its attorneys' fees and expenses in this action; and

6. For such other relief as the Court may deem just and proper.

JURY DEMAND

Zappos.com demands a jury on all issues so triable.

DATED this 26th day of December, 2007.

PARSONS BEHLE & LATIMER

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